

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA12-714

BENNIE JEAN WHITE

APPELLANT

V.

ALVIN D. CLAY

APPELLEE

Opinion Delivered MARCH 6, 2013

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
THIRD DIVISION
[NO. 60CV-11-763]

HONORABLE JAY MOODY, JUDGE

REVERSED AND REMANDED

KENNETH S. HIXSON, Judge

This case originates from a lawsuit between appellant Bennie Jean White and Larry Hartsfield. Bennie Jean White was represented in that lawsuit by appellee attorney, Alvin D. Clay. Ms. White's claim against Mr. Hartsfield was ultimately dismissed with prejudice on October 25, 2007.

Approximately three and a half years after the dismissal of her lawsuit against Hartsfield, Ms. White filed a complaint for legal malpractice against Mr. Clay on February 17, 2011. In her malpractice complaint, Ms. White alleged that Mr. Clay was negligent during his representation, and that her action against Mr. Hartsfield was dismissed because of Mr. Clay's negligence. In addition, Ms. White alleged that Mr. Clay committed fraud and deceit during his representation, and that he involved her in a fraudulent investment scheme where he borrowed \$60,000 from her and refused to repay it.



The trial court subsequently entered summary judgment in favor of Mr. Clay against Ms. White on May 18, 2012, finding that the applicable three-year statute of limitations for legal malpractice had expired prior to the filing of her action. The trial court also found that the statute of limitations for legal malpractice was not tolled by any fraudulent concealment on the part of Mr. Clay. Ms. White now appeals from the order of summary judgment, arguing that the trial court erred in denying her motion to strike Mr. Clay's answer and enter a default judgment. She argues, in the alternative, that summary judgment was improper because material issues of fact remained. We agree with appellant's first argument, and we reverse.

When Ms. White's legal malpractice action against Mr. Clay was commenced on February 11, 2011, Mr. Clay was incarcerated in a federal prison in Alabama. Mr. Clay was served with process in prison on or about March 15, 2011. According to the argument advanced by Clay's subsequently retained attorney at the hearing, Clay prepared a pro se handwritten answer to the complaint while in prison and delivered the handwritten answer to his mother, Gloria Clay, so that she could convert it to a typewritten document. Gloria Clay did convert the handwritten answer to a typewritten pleading and the answer was timely filed. In the signature block of the filed pro se answer, the answer was signed "*Alvin D. Clay, by Gloria Clay, Power of Attorney*" over the signature line, which read, "Alvin D. Clay, Pro Se." The certificate of service was signed "*Alvin D. Clay by Gloria D. Clay*" over the signature line "Alvin D. Clay."



A year later, on February 29, 2012, Mr. Clay signed and filed a pro se motion for summary judgment and brief in support on the grounds that the statute of limitations for legal malpractice had expired prior to the commencement of the lawsuit. On March 20, 2012, Ms. White filed a response to summary judgment, a motion to strike, and a motion for default judgment. In response to the motion for summary judgment, Ms. White argued that the statute of limitations period was tolled due to Mr. Clay's fraudulent concealment of the legal malpractice, and she submitted an accompanying affidavit. In the motion to strike and motion for default judgment, Ms. White asserted that the original answer was signed by "*Gloria Clay*" and Gloria Clay was not authorized to practice law and, therefore, the answer was a nullity. For that reason, Ms. White asked that the answer be struck and Mr. Clay found in default.

A hearing on the motion for summary judgment, motion to strike, and motion for default judgment was held on April 14, 2012. By this time, Mr. Clay was no longer pro se and was represented by counsel. On the issue of the motion to strike Mr. Clay's answer, Ms. White's counsel argued that Mr. Clay's mother, Gloria Clay, had engaged in the unauthorized practice of law. Although no proof was submitted on the issue, Mr. Clay's counsel argued that Mr. Clay was served with process in prison without computer access; that Mr. Clay prepared a pro se handwritten document and sent it to his mother to be typed; and that his mother typed the answer and signed it on his behalf. The trial court also heard arguments on the statute-of-limitations issue and whether there had been any fraudulent concealment by Mr. Clay in Ms. White's underlying action. In its subsequent order granting summary judgment to Mr. Clay on the statute-of-limitations issue, the trial court also



specifically found that the statute of limitations was not tolled by any fraudulent concealment by Mr. Clay; denied Ms. White's motion to strike; and denied the motion for default judgment.

The first argument raised by Ms. White in this appeal is that the trial court erred in denying her motion to strike and for default judgment. The standard of review for the granting or denial of a motion for default judgment is whether the trial court abused its discretion. *Maple Leaf Canvas, Inc. v. Rogers*, 311 Ark. 171, 842 S.W.2d 22 (1992). We agree that under these circumstances the trial court abused its discretion in denying Ms. White's motion for default judgment because the answer filed on behalf of Mr. Clay was a nullity.

Rule 11(a) of the Arkansas Rules of Civil Procedure provides that "[a] party who is not represented by an attorney shall sign his pleading, motion, or other paper and sign his address and telephone number, if any." Arkansas Code Annotated section 16-22-206 (Repl. 1999) provides, "No person shall be licensed or permitted to practice law in any of the courts of record in this state until he has been admitted to practice by the Supreme Court of this state, and every person so admitted shall be entitled to practice in all the courts of this state."

A person who is not a licensed attorney may not practice law in Arkansas. *Abel v. Kowalski*, 323 Ark. 201, 913 S.W.2d 788 (1996). In *Davenport v. Lee*, 348 Ark. 148, 72 S.W.3d 85 (2002), our supreme court held that where a party not licensed to practice law in this state attempts to represent the interest of others by submitting himself or herself to the jurisdiction of the court, those actions, such as the filing of pleadings, are rendered a nullity.



Although the parties have cited no Arkansas case directly on point with the circumstances of this case, and we have found none, we find a recent case delivered by the Virginia Supreme Court to be persuasive. In *Aguilera v. Christian*, 699 S.E.2d 517 (Va. 2010), Benjamin Aguilera filed a complaint against Andrew Christian for personal injuries sustained in a car accident. Mr. Aguilera did not personally sign the complaint but asked B. Marion Chou, his neighbor and friend, to sign his name on the complaint for him. Mr. Chou signed Mr. Aguilera's name on the complaint and placed the initials "bmc" directly above the signature. The Virginia Supreme Court held that the trial court did not err in dismissing the complaint because it was invalid and a nullity, being that it was not signed by the party with the cause of action or an attorney licensed to practice in Virginia. The court reasoned as follows:

Both [our] statute and [our] rule unambiguously state that a party not represented by an attorney "shall sign" a pleading. Nothing in this language permits a person other than a licensed attorney to sign a pleading on behalf of an unrepresented party. The policy underlying this requirement is clear. Our legal system allows parties in litigation to proceed either pro se or through representation by a duly licensed attorney. As we explained in *Kone v. Wilson*, 272 Va. 59, 62–63, 630 S.E.2d 744, 746 (2006), the party with the cause of action may proceed on his own behalf but pleadings signed by a person acting in a representative capacity for the party with the cause of action are a nullity unless such person is licensed to practice law in this Commonwealth.

699 S.E.2d at 519. The court rejected Mr. Aguilera's argument that because his signature was placed on the document with his permission, he effectively endorsed the document.

Although Mr. Clay similarly contends that his mother signed the answer with his permission, pursuant to an alleged power of attorney, we hold that because Mr. Clay's answer was not signed by him or a person authorized to practice law in Arkansas, it was invalid.



Mr. Clay's mother was not authorized to sign the answer on his behalf, and there is nothing in the record to show that she held a valid power of attorney.

Finally, we acknowledge that Mr. Clay argues that Ms. White's motion to strike was untimely because it was not filed within the temporal parameters of Arkansas Rule of Civil Procedure 12(f), which provides:

(f) *Motion to Strike.* Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 30 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

However, this rule relates to the striking of certain material from a pleading and is inapplicable here. When, as here, a party not licensed to practice law attempts to represent the interests of another by filing a pleading, the pleading itself is a nullity. See *Davidson Props., LLC v. Summers*, 368 Ark. 283, 244 S.W.3d 674 (2006); *Davenport, supra*.

We hold that the trial court erred in denying Ms. White's motion to strike Mr. Clay's answer because his answer was a nullity. Because no valid answer was timely filed, a default judgment should have been entered in favor of Ms. White. Our disposition of this issue moots any discussion regarding the statute of limitations. We reverse the summary judgment entered in favor of Mr. Clay, and we remand for action consistent with this opinion.

Reversed and remanded.

GLADWIN, C.J., and WYNNE, J., agree.

Gibson Law Firm, PLLC, by: *Jesse J. Gibson*, for appellant.

Ronald L. Davis, Jr., for appellee.